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June 18, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: December 13, 2007

Case Number: TSO-0585

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) for access authorization.<sup>1/</sup> The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual is eligible for access authorization. After reviewing the evidence before me, I find the Individual should not be granted access authorization.

***I. Background***

This administrative review proceeding began when a Department of Energy (DOE) Office, denied the Individual's access authorization based upon derogatory information in the possession of the DOE Office that created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the DOE Office subsequently issued a Notification Letter that included a statement of the derogatory information causing the security concern.

The first security concern cited in the Letter involves the Individual's misuse of alcohol. The Notification Letter stated that a DOE consulting psychiatrist evaluated the Individual on August 30, 2007. In her report, the DOE consulting psychiatrist diagnosed the Individual as suffering from alcohol abuse and opined that the Individual is a user of alcohol habitually to excess. The DOE consulting psychiatrist further found that the Individual was still consuming alcohol at the time of the interview and had been intoxicated one and a half months prior to the interview.

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<sup>1/</sup> Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5(a).

In her report, the DOE consulting psychiatrist determined that in order to establish rehabilitation, the Individual should “satisfactorily complete a minimum of 50 hours of professionally led substance abuse treatment program, for minimum of six months, including what is called ‘aftercare’ and be completely abstinent from alcohol . . . for minimum of one year following completion of the program.” DOE Ex. 5 at 15. The DOE consulting psychiatrist indicated that adequate evidence of reformation would be either one and a half years of absolute abstinence, if the Individual attends the program as outlined above, or three years of absolute abstinence if the Individual does not attend a professionally led substance abuse treatment program. DOE Ex. 5 at 16.

Along with the DOE consulting psychiatrist’s diagnosis, the Notification Letter indicated that the Individual had numerous alcohol-related encounters with the law. According to the Notification Letter, both of these factors constitute derogatory information under 10 C.F.R. § 710.8(h) and (j) (hereinafter Criterion H and Criterion J).<sup>2/</sup>

The second security concern cited in the Notification Letter involves the Individual’s unusual conduct that tends to show he is not honest, reliable, or trustworthy. The Letter listed numerous arrests, including an Open Container violation in April 2007, Public Intoxication in October 2005, Minor in Possession in February 2001 and October 2000, seat belt violations in August 2002 and May 2001, speeding in March 2005, Drag Racing in April 2002, curfew violation in 2001, evading arrest in December 2000, and Disorderly Conduct in October 1999. The Individual admitted to all these arrests during a Personnel Security Interview (PSI) held on June 12, 2007. According to the Notification Letter, all these arrests constitute derogatory information under 10 C.F.R. § 710.8(l) (hereinafter Criterion L).<sup>3/</sup>

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. Upon receipt of the Notification Letter, the Individual requested a hearing, and that request was forwarded to the Office of Hearings and Appeals. I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.<sup>4/</sup>

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<sup>2/</sup> Criterion H refers to information indicating that an individual has “an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J refers to information indicating that an individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” *Id.* at § 710.8(j).

<sup>3/</sup> Criterion L refers to information indicating that the Individual has “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy.” *Id.* at § 710.8(l).

<sup>4/</sup> 10 C.F.R. § 710.25(g).

At the hearing, the Individual represented himself, presenting his own testimony and the testimony of his alcohol psychologist, three previous supervisors, and his girlfriend. The DOE Counsel presented one witness, the DOE consulting psychiatrist. The DOE Counsel entered 13 exhibits into the record.

## *II. The Hearing*

At the hearing and in his response to the Notification Letter, the Individual did not dispute the diagnosis of the DOE consulting psychiatrist that he suffered from alcohol abuse. Hearing Transcript (Tr.) at 57. Accordingly, the focus of the hearing was on the steps that the Individual has taken toward reformation and rehabilitation. The witnesses' testimony also addressed the Individual's reliability and trustworthiness.

### *A. The Individual*

The Individual testified that he ceased consuming alcohol in October 2007. Tr. at 56. He sought counseling as a result of the DOE consulting psychiatrist's report, and because consuming alcohol was affecting him negatively at home and at work. Tr. at 56, 64. He started counseling because he felt he needed help to stop drinking. Tr. at 66. He does not plan to consume alcohol again. Tr. at 66. He goes to aftercare sessions every week on Thursday. Tr. at 66. He has attended aftercare "nonstop since January [2008]." Tr. at 71. He is not enrolled in Alcoholics Anonymous (AA), because he felt uncomfortable during the one session he attended. Tr. at 66, 86. There is alcohol present in his house, because his girlfriend consumes alcohol. Tr. at 67. The Individual believes he will be successful in maintaining his sobriety because he has matured. Tr. at 78-79.

### *B. The Individual's Girlfriend*

The Individual's girlfriend testified that she has known the Individual for eight years, since high school. Tr. at 44. They presently live together and have a five-year-old son. Tr. at 45. She last saw the Individual consume alcohol in September or October of 2007. Tr. at 46. She testified that he has never gone to work intoxicated or hung over. Tr. at 46. She testified that they do have vodka at their house, because she consumes it. Tr. at 47. The Individual's girlfriend testified that he goes to treatment every Thursday. Tr. at 49-50. She testified that the Individual seems happier since he stopped consuming alcohol. Tr. at 52. He does a lot more to help around the house. Tr. at 52. She stated that he is a wonderful father. Tr. at 52.

### *C. The Individual's Supervisors*

The Individual's direct supervisor testified that he has known the Individual for 14 months, since the supervisor started working at the facility. Tr. at 35. He supervised the Individual

from May until September 2007. Tr. at 35. He presently sees the Individual twice a week. Tr. at 36. The Individual was always on time. Tr. at 37. He never saw the Individual intoxicated or hung over at work. Tr. at 36.

The Individual's second-line supervisor testified that he has known the Individual since October 2006. Tr. at 11. He hired the Individual and supervised him for a few months until another supervisor could be hired. Tr. at 11. Presently, the second-line supervisor sees the Individual about one or two times a month at work. Tr. at 12. They socialized together one time after work in the summer of 2007, and he saw the Individual consume one beer. Tr. at 12. The supervisor stated that the Individual is an excellent, hard worker and a fast learner. Tr. at 13-14.

The Individual's third-line supervisor testified that he has known the Individual since October 2006, when the Individual was hired. Tr. at 18. He has never seen the Individual intoxicated or hung over. Tr. at 19. The Individual's attitude is good and he gets along well with his co-workers. Tr. at 19, 21. He saw the Individual about once or twice a week when they were working in the same department, but now he sees him about twice a month. Tr. at 20.

#### D. The Individual's Psychologist

The psychologist testified that she has a degree in psychology and is a licensed professional counselor and a licensed chemical dependency counselor. Tr. at 25. She first saw the Individual on November 15, 2007, when he asked for an assessment to determine if he was a candidate for intensive outpatient treatment for his alcohol use. Tr. at 26. At the time, she diagnosed him as alcohol dependent and she referred him into a professional addiction specialty services program. Tr. at 26. He began the program that evening and attended four sessions. Tr. at 29. He ceased attending after those four sessions because he believed he could address his alcohol problem by attending AA and acquiring a sponsor. Tr. at 29.

The Individual restarted the intensive outpatient treatment program on January 7, 2008. He successfully completed the 60-hour program on January 29, 2008. Tr. at 29. The psychologist stated that he actively participated in the treatment program. Tr. at 29. He completed all required assignments. Tr. at 29. She explained further that the reports state that the Individual was well motivated. Tr. at 29.

With regard to further treatment, the Individual has been attending aftercare every Thursday since he finished the intensive outpatient program on January 29, 2008. Tr. at 30. He actively participates in the aftercare sessions as opposed to passively attending the sessions with no participation. Tr. at 30. He has been attending aftercare for approximately two months or eight sessions.

The psychologist opined that the Individual's prognosis is guarded as of the time of the hearing. Tr. at 32. However, she also opined that she considered the Individual to be rehabilitated or reformed as of their last meeting, January 29, 2008. Tr. at 32. She believes he should attend AA and have a follow-up appointment with her. Tr. at 30-31. She opined that he cannot consume alcohol in the future. Tr. at 33.

#### E. The DOE Consulting Psychiatrist

With respect to the Individual's alcohol problems, the DOE consulting psychiatrist testified that she struggled with a diagnosis of either alcohol dependence or alcohol abuse. Tr. at 91. Eventually, she diagnosed the Individual with alcohol abuse.

As to her recommendation for rehabilitation or reformation, the DOE consulting psychiatrist made the same recommendation that she would for someone diagnosed with alcohol dependence. Tr. at 93. That recommendation was that the Individual should "satisfactorily complete a minimum of 50 hours of professionally led substance abuse treatment program, for minimum of six months, including what is called 'aftercare' and be completely abstinent from alcohol . . . for minimum of one year following completion of the program." DOE Ex. 5 at 15. The DOE consulting psychiatrist indicated that adequate evidence of reformation would be either one and a half years of absolute abstinence, if the Individual attends the program as she has outlined it above, or three years of absolute abstinence if the Individual does not attend a professionally led substance abuse treatment program. DOE Ex. 5 at 16. The DOE consulting psychiatrist confirmed that recommendation at the hearing. Tr. at 96. Unlike the Individual's alcohol psychologist, she testified that she could not conclude that the Individual should never consume alcohol again. Tr. at 98.

With regard to his further treatment, at a minimum, the DOE consulting psychiatrist opined that the Individual needs to remain in aftercare. Tr. at 101. She would prefer that he attend AA. Tr. at 102. She concluded that, as of the time of the hearing, the Individual's risk of relapsing into alcohol abuse is "still quite high," because of the minimal length of his sobriety, and because he is not attending AA but only one aftercare session per week. Tr. at 103.

### *III. Standard of Review*

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of proceeding, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would

not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of the national security test” for the granting of security clearances indicates that “security-clearance determinations should err, if they must, on the side of denials.”) *Dorfman v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving security clearance eligibility. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate, or mitigate the allegations. *Personnel Security Hearings* (Case No. VSO-0005), 24 DOE ¶ 82,753 (1995), *aff’d*, 25 DOE ¶ 83,013 (1995). See 10 C.F.R. § 710.7(c).

#### ***IV. Findings and Conclusions***

##### **A. Criteria H and J**

###### **1. Diagnosis**

As noted above, the Individual in this case does not dispute the diagnosis of alcohol abuse and recognizes that it raises a security concern for the DOE. At the hearing, the Individual’s psychologist testified that she diagnosed the Individual as suffering from alcohol dependence. The record shows, and the hearing testimony corroborates, that the DOE consulting psychiatrist diagnosed the Individual with alcohol abuse but, in fact, “struggled” with her diagnosis, wavering between alcohol abuse and alcohol dependence. Tr. at 91. Accordingly, the experts agree that the Individual is suffering from an alcohol-related disorder and, in fact, are not far apart in their diagnoses. The issue in this case is whether the Individual has demonstrated that he is reformed and/or rehabilitated from his alcohol disorder. I therefore do not need to determine which of the two diagnoses is correct. *Personnel Security Decision*, Case No. VSO-0577, 28 DOE ¶ 82,904 (2003).

###### **2. Rehabilitation**

The Individual testified that he has been abstinent since October 2007. The Individual’s girlfriend testified that he has not consumed alcohol since September or October 2007. The Individual’s psychologist is confident that the Individual has been abstinent since he first consulted with her in November 2007. I am therefore persuaded that the Individual has been abstinent since October 2007, a period of six months.

The record also includes information regarding the Individual's treatment program. The Individual's psychologist testified that he successfully completed a 60-hour intensive outpatient treatment program in January 2008. The Individual's psychologist testified that the Individual has been actively involved in the aftercare program, which he has attended every Thursday since he completed the intensive outpatient treatment program in January 2008, a period of approximately two months as of the date of the hearing. The Individual testified that he attends aftercare every Thursday evening, and his girlfriend corroborated that he attends aftercare meetings regularly.

The two experts do not agree on whether the Individual is rehabilitated or reformed from his alcohol-related disorder. The Individual's psychologist testified that she believes he is rehabilitated or reformed. The DOE consulting psychiatrist disagrees. For the following reasons, I find the DOE consulting psychiatrist to be more persuasive on this issue.

First, the Individual's psychologist stated that the prognosis regarding the Individual's consumption of alcohol is guarded. I believe a guarded prognosis regarding his consumption of alcohol is contradictory to a finding that the Individual is rehabilitated. Second, the Individual's psychologist recommended that he attend AA, which he has not done. I also believe that not following his psychologist's recommendation regarding treatment to be contradictory to a finding that the Individual is rehabilitated.

Finally, in regard to the Individual's psychologist's opinion that he is rehabilitated or reformed, the Individual had been abstinent for only six months at the time of the hearing. In most cases involving alcohol dependence, which is the diagnosis of the Individual's psychologist in this case, the experts require a longer abstinence period for a finding of rehabilitation or reformation. In some cases, experts require a two or three-year period of abstinence as part of a rehabilitation for alcohol dependence. *Personnel Security Decision*, Case No. TSO-0545, 30 DOE ¶ 82,768 (March 6, 2008); *Personnel Security Decision*, Case No. TSO-0355, 29 DOE ¶ 82,951 (August 1, 2006). In virtually all cases, a minimum of one year of abstinence is required. *Personnel Security Decision*, Case No. TSO-0548, 30 DOE ¶ 82,759 (February 5, 2008). Thus, the Individual's psychologist's opinion that the Individual is rehabilitated or reformed after only six months of abstinence is contrary to that expressed by most experts who testify in Part 710 proceedings. The Individual's psychologist did not explain why she believed a shorter abstinence period was adequate for this Individual. I, therefore, give more credence to the DOE consulting psychiatrist's opinion that the Individual's abstinence period is insufficient.

Neither the Individual's time in abstinence nor time in treatment meets the recommendations of the DOE consulting psychiatrist. His time in treatment, as of the time of the hearing, is three and a half months, less than the six months recommended by the DOE consulting psychiatrist. His time in abstinence is six months, less than the year and

a half recommended by the DOE consulting psychiatrist. Also contrary to a finding that he is rehabilitated or reformed, he has not attended AA, as suggested by both the experts. Therefore, I find that at the time of the hearing, the Individual did not have enough time in abstinence, nor enough time in treatment. Consequently, I find that the Criterion H and Criterion J concerns regarding the Individual's alcohol disorder have not been mitigated by the evidence provided by the Individual.

#### **B. Criterion L**

The Notification Letter finds that the Individual's numerous alcohol-related and non-alcohol-related arrests, which occurred in April 2007, October 2005, March 2005, August 2002, April 2002, March or June 2001, May 2001, February 2001, December 2000, October 2000, and October 1999 raise a Criterion L concerns. The concerns raised by the alcohol-related arrests might have been mitigated if the Individual had established he was rehabilitated. Since I have not made such a finding and the Individual offered no other mitigation for these arrests, I find that the security concerns have not been mitigated. The Individual did not present any evidence to mitigate the concerns raised by the non alcohol-related arrests.

#### **V. Conclusion**

As the foregoing indicates, I have found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Criteria H, J, and L. After considering all the relevant information, I find that the Individual has not resolved the Criteria H, J, and L security concerns cited in the Notification letter. Therefore, I cannot conclude that granting the Individual's access authorization would not endanger the common defense and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's request for access authorization should not be granted. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman  
Hearing Officer  
Office of Hearings and Appeals

Date: June 18, 2008